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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,042	05/06/2004	Mark Edwin Ferry	9630	7766
27752	7590	09/15/2009	EXAMINER	
THE PROCTER & GAMBLE COMPANY			CORDRAY, DENNIS R	
Global Legal Department - IP			ART UNIT	PAPER NUMBER
Sycamore Building - 4th Floor			1791	
299 East Sixth Street				
CINCINNATI, OH 45202				
MAIL DATE		DELIVERY MODE		
09/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/840,042	<b>Applicant(s)</b> FORRY ET AL.
	<b>Examiner</b> DENNIS CORDRAY	<b>Art Unit</b> 1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 July 2009.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,5,7-10 and 12-15 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,5,7-10 and 12-15 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/136/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

#### **DETAILED ACTION**

##### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/30/2009 has been entered.

##### ***Response to Arguments***

Applicant's amendments, filed 6/30/2009, have overcome the rejections of Claims 1, 5, 7-10 and 12-15 over Schmidt et al in view of others. The indicated rejections have been withdrawn. The rejections over Chen et al and over Chen et al in view of Klowak et al are maintained, but have been amended to address the amended claims.

Applicant's arguments regarding Chen et al have been fully considered but they are not persuasive. The randomness of the applied adhesive on the tissue has been discussed in the preceding Office Action.

##### ***Claim Rejections - 35 USC § 102 and 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5, 7-9 and 12-15 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chen et al (US 2004/0099388) as evidenced by Swoboda et al (6740373).

Claim 1: Chen et al ('388) discloses tissue products in roll form (Abs; p 1, par 1; p 2, par 23; p 4, par 39; p 6, par 74; p 18, par 175) comprising a wet laid or air laid fibrous structure (p 8, pars 85 and 87; p 17, par 170) having a patterned three dimensional configuration of raised web portions molded into the web and projecting out of the surface (p 2, pars 16, 20 and 23). The web inherently has at least first and second surfaces or, at least, such surfaces would have been obvious to one of ordinary skill in the art.

The molded portions can be made by embossing in a desired design, which is controlled by the pattern on the embossing member (p 6, par 67; p 9, par 97).

Alternatively, the web can be embossed separately from the molding process (p 6, par 68; p 17, par 170; p 18, pars 177 and 178) in a desired design controlled by the pattern on the embossing member or, at least, providing a desired design would have been obvious to one of ordinary skill in the art.

In some embodiments, the raised portions have a height above the planar surface of the web of about 1 mm, or 1000  $\mu\text{m}$ , which reads on values greater than 1000  $\mu\text{m}$  (p 9, par 96). The web comprises an adhesive material, applied to the web before, during or after the web is molded, and covering up to about 100% of the area of the surface of the web (p 16, par 162). Due to the random deposition of fibers from the

web forming process, the adhesive is inherently present in a random pattern on the fibers or, at least, a random pattern would have been obvious to one of ordinary skill in the art. Alternatively, Chen et al ('388) shows random patterns of printed adhesive on the surface. See, for instance, Figures 9 and 10, which show a height map of a putty impression of a printed web. In the Figures, the darker regions correspond to the high points of the adhesive material, while the lighter regions correspond to the lower regions (p 19, pars 185-189). The image and the depth profile both show the random pattern on the surface.

Examples of the disclosed molded pattern (Fig 5) reveal patterns that are not nesting, thus the average effective sheet caliper of the molded product is greater than that of an unmolded product.

Figure 4 shows an embodiment where both sides of the web are molded to approximately the same deformation height.

Chen et al does not disclose the glass transition temperature (Tg) of the latex binder. The disclosed species are substantially the same as commercially available conventional latexes that have Tg's in the claimed range (see Swoboda et al, 6740373, col 27, Table 5), thus will have a Tg in the claimed range or, at least, it would have been obvious to one of ordinary skill in the art to obtain the claimed Tg.

Claims 5 and 7: Chen et al ('388) discloses that the adhesive can be a latex, such as vinyl acetate copolymers, ethylene-vinyl acetate, styrene-butadiene, acrylic emulsions (p 13, par 140).

Claims 8 and 9: In some embodiments (Figs 7A and 7B), the molded pattern comprises raised areas of low relative density and compressed areas of high relative density. In other embodiments (Fig 4), the molded pattern does not result in raised areas of lower density than compressed areas, but raised and lowered areas of similar thickness (and density) or, at least, a substantially uniform density would have been obvious to one of ordinary skill in the art. Alternatively, given the repeating molded pattern, the density of a random area of the tissue on a gross scale covering multiple repeating pattern areas compared with another random area of the tissue on a gross scale covering multiple repeating pattern areas shows substantial uniformity or, at least, substantial uniformity would have been obvious to one of ordinary skill in the art.

Claim 14: Chen et al ('388) discloses products having a caliper of 0.027 to 0.30 in., or 27 to 30 mils (Figure 15).

Claims 12, 13 and 15: The structure of the sheet of Chen et al ('388) is substantially the same as the claimed structure, thus will have the claimed properties because, where the claimed and prior art apparatus or product are identical or substantially identical in structure or composition, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). In other words, when the structure recited in the reference is substantially identical to that of the claims, the claimed properties or functions are presumed to be inherent.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al ('388) in view of Klowak et al (4507173).

Chen et al ('388) does not disclose that the latex is substantially present in the high density regions of the fibrous structure.

Klowak et al discloses a fibrous tissue structure comprising a patterned web comprising a molded pattern of compressed areas and raised areas and a binding material applied to the surface thereof (Abs; col 1, line 61 to col 2, line 6; Fig. 5). The pressure applied by the raised surfaces of the impression roller of the molding apparatus causes the binding liquid to be dispersed deeply into the compressed areas (areas of higher density) and highly concentrated therein to provide strength, while the uncompressed areas receive a light coating that provides resistance to linting, a soft bulky feel and excellent absorbency (col 2, lines 6-33).

The art of Chen et al ('388), Klowak et al and the instant invention is analogous as pertaining to tissue products comprising three dimensional molded patterns. It would have been obvious to one of ordinary skill in the art to concentrate the binder to be substantially present in the compressed areas of higher density and more lightly present in the raised areas of the product of Chen et al ('388) in view of Klowak et al to provide strength in the compressed areas while providing resistance to linting, a soft bulky feel and excellent absorbency to the raised areas.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DENNIS CORDRAY whose telephone number is (571)272-8244. The examiner can normally be reached on M - F, 7:30 -4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Cordray/  
Examiner, Art Unit 1791

/Eric Hug/  
Primary Examiner, Art Unit 1791